

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Robert Baughman,	:	
Petitioner,	:	
	:	
v.	:	File No. 1:05-CV-56
	:	
James Erwin and William	:	
Sorrell,	:	
Respondents.	:	

MAGISTRATE JUDGE'S AMENDED REPORT AND RECOMMENDATION  
(Papers 1, 2 and 21)

Currently before the Court is petitioner Richard Baughman's petition for habeas corpus pursuant to 28 U.S.C. § 2254. Baughman's petition was transferred to this Court from the United States District Court for the Southern District of Ohio on March 4, 2005. In the Order of transfer, the Ohio court granted an amendment to the petition naming "as an add'l respondent the Attorney General of Vermont." (Paper 11). On August 9, 2005, I issued a Report and Recommendation in which I recommended that Baughman's petition (Paper 1), as amended, be dismissed for failure to exhaust state court remedies. (Paper 26).

Still pending before the Court is the remainder of Baughman's proposed amended petition (Paper 2). Baughman submitted his petition pursuant to Fed. R. Civ. P. 15(a),

and the Court construes his filing as a motion to amend. The motion to amend (Paper 2) is hereby GRANTED.

In his amended petition, Baughman asserts the same claims as in his initial petition, and adds claims of ineffective assistance of counsel. Specifically, Baughman claims that his trial counsel failed to conduct adequate investigations, failed to advise him about potential conflicts of interest, and failed to make appropriate objections. Baughman also claims that appellate counsel was ineffective when she persuaded him to approve the waiver of his direct appeal.<sup>1</sup>

The amended petition does not address the issue of exhaustion of state court remedies. As set forth in my initial Report and Recommendation, Baughman must exhaust those remedies before he may proceed with a habeas corpus petition in this Court. The addition of substantive claims in the amended petition does not change my recommendation. Accordingly, for the reasons set forth in my previous Report and Recommendation, the

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<sup>1</sup> In his opposition to the respondents' motion to dismiss, Baughman asserted similar, though not identical, claims of ineffective assistance of counsel. (Paper 25). Those claims were fully considered in my initial Report and Recommendation.

respondents' motion to dismiss (Paper 21) should be GRANTED, and Baughman's petitions for a writ of habeas corpus (Papers 1 and 2) should be DISMISSED without prejudice for failure to exhaust state court remedies.

Dated at Burlington, in the District of Vermont,  
this 31<sup>st</sup> day of August, 2005.

/s/ Jerome J. Niedermeier  
Jerome J. Niedermeier  
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).